

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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YURMAN STUDIO, INC. and YURMAN  
DESIGN, INC.,

Plaintiffs/Counter-Defendants,

- against -

ELENA CASTANEDA and EJEWELER LLC  
d/b/a OVERSTOCKJEWELER.COM,

Defendants/Counter-Plaintiffs.  
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Civil Action No. 07-1241 (SAS)(HP)  
(Action No. 1)

CARTIER, a division of RICHEMONT NORTH  
AMERICA, INC., CARTIER INTERNATIONAL,  
N.V., CARTIER CREATION STUDIO, S.A., VAN  
CLEEF & ARPELS S.A., VAN CLEEF &  
ARPELS, INC., VAN CLEEF & ARPELS  
DISTRIBUTION, INC., GUCCI AMERICA, INC.,  
and BULGARI S.p.A.,

Plaintiffs,

- against -

ELENA CASTANEDA and EJEWELER LLC  
d/b/a OVERSTOCKJEWELER.COM,

Defendants.  
----- X

Civil Action No. 07-7862 (SAS)(HP)  
(Action No. 2)

**DECLARATION OF LOUIS S. EDERER, ESQ. IN OPPOSITION TO  
DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

**EXHIBIT A**

1 ELENA CASTANEDA

2 Q Can you answer the question?

3 A I did not draft this second  
4 paragraph.

5 Q Okay. And you've never seen it  
6 before?

7 A Actually, no. That was added by my  
8 SCO guy.

9 Q The who?

10 A The search operations guy sometimes  
11 goes in and adds text.

12 Q Who is that?

13 A I call him Martin, but he has an  
14 Israeli name. I would have to look up his actual  
15 name. I call him Martin.

16 Q Does he live in the City of  
17 New York?

18 A No, he lives in Canada.

19 Q What does he do for you?

20 A He just pumps up my website for  
21 search to make it more search friendly.

22 Q And what does that mean?

23 A Just so that the website is more --  
24 found more easily.

25 Q By whom?

1 ELENA CASTANEDA

2 A By customers.

3 Q So, for example, if someone wanted  
4 to punch in the words "David Yurman," hopefully  
5 your website has enough references to David Yurman  
6 that your website would pop up during that search?

7 A I believe so. I don't really know  
8 how the SCO -- what the criteria is, what makes  
9 that happen.

10 Q Do you pay this Martin for his  
11 services?

12 A I do.

13 Q Does he bill you for those services?

14 A He does.

15 Q How often does he do that?

16 A Monthly.

17 Q How often does he work on your  
18 website?

19 A He works on it, probably, weekly.

20 Q What you're saying is, he puts copy  
21 into your website without your knowledge or  
22 approval; is that correct?

23 A He tells me that he's going to put  
24 some copy in, and usually I have one of my writers  
25 look it over. If someone in my office looked this

1 ELENA CASTANEDA

2 MR. EDERER: Hold on.

3 (The above described document was  
4 marked Plaintiffs' Exhibit 7 for  
5 identification, as of this date.)

6 Q Do you recognize Exhibit 7?

7 A I do.

8 Q What is that?

9 A That's my Certificate of  
10 Incorporation.

11 Q For Ejeweler LLC?

12 A Yes.

13 Q And this document appears to  
14 indicate that the company was formed on the 17th  
15 day of July 2002, correct?

16 A Yes.

17 Q Does that comport with your  
18 recollection?

19 A Yes, it does.

20 Q And how long after that did you  
21 start your business?

22 A It probably was up and running by  
23 October.

24 Q October of '02?

25 A Yes, a very, very small level.

1 ELENA CASTANEDA

2 Q And when you sold that discount  
3 clothing and you bought overstocks, that's all  
4 from the brand owners, correct?

5 A Correct. As the jewelry in the  
6 store we bought from sterling silver manufacturers  
7 that we still buy from today, that we would buy at  
8 a discount and sell it in the store. Jewelry is  
9 no different than any other vendor.

10 Q That's what you believe the word  
11 "overstock" means to consumers, correct?

12 A Correct.

13 Q Let's go on.

14 A It is additional inventory. They  
15 are not making this stuff for us. It is excess  
16 inventory that's sitting there.

17 Q It can be any excess inventory sold  
18 by anybody?

19 A Yes.

20 Q That's what you believe the consumer  
21 understands?

22 A Absolutely.

23 Q The basis for that is your own  
24 experience?

25 A That's right.

1 ELENA CASTANEDA

2 Q Not from talking to consumers?

3 A I owned a clothing store. I spoke  
4 with clients all the time.

5 Q What consumer ever said to you they  
6 understood the word "overstock", as used by you on  
7 your website, means your purchase of items from  
8 companies like P & K?

9 MR. ZARIN: You want a name?

10 A. I don't speak to people on my  
11 website. When I owned a clothing store I spoke to  
12 people. That was twenty years ago.

13 Q Who was P & K making overstock items  
14 for?

15 A I have no idea.

16 Q Let's go to the second paragraph of  
17 this page. The first sentence says,  
18 "overstockjeweler.com is committed to providing  
19 you the best in quality, service and selection of  
20 designer inspired jewelry in the world."

21 Do you see that?

22 A Um-hum.

23 Q Do you agree or disagree with that  
24 statement?

25 A Since I'm not familiar with this

1 ELENA CASTANEDA

2 Q Have you ever sent Alice out to buy  
3 items specifically so that you could put them up  
4 on your website as "David Yurman inspired"?

5 A Specifically?

6 Q Yes.

7 A No.

8 Q In other words, have you asked  
9 Alice, would you go out and get some additional  
10 David Yurman inspired items, because they are  
11 doing pretty well?

12 A No. We go through our reports and  
13 see what's selling and we get things that are  
14 similar to what's selling, regardless if it's --  
15 if we were selling rings, we went out and got more  
16 rings.

17 Q Take me through the buying process.  
18 Do you attend trade shows?

19 A Not so much anymore.

20 Q How do you go about buying what  
21 might turn out to be a Cartier inspired item?

22 Take me through that process.

23 MR. ZARIN: By "you," you mean?

24 A Our offices is, we are basically  
25 using the ground floor as a stock room, and we

1 ELENA CASTANEDA

2 walk down and we get orders and we pick up stuff  
3 all day long and vendors come up with new stuff  
4 and they tell us what's doing well.

5 I've been a buyer a long time, and  
6 I -- I can't read people's minds. I go by reports  
7 and what -- my vendors steer me in the right  
8 direction of what's selling.

9 Q So six months ago or more when you  
10 went into a vendor and some vendor told you that  
11 this is a "David Yurman inspired" item that's  
12 doing pretty well, take me through the process of  
13 the actual purchase that you might make.

14 A We would purchase one piece of it,  
15 photograph it, put it up and see if it sold.

16 Q When a vendor tells you that an item  
17 is David Yurman inspired or Cartier inspired or  
18 Gucci inspired or Bulgari inspired, for example,  
19 do you then take any steps to determine whether or  
20 not that company has intellectual property rights  
21 registered with respect to that design?

22 MR. ZARIN: Objection. You're  
23 asking for a legal conclusion.

24 MR. EDERER: No, I'm asking what she  
25 does.



1 ELENA CASTANEDA

2 A I can't.

3 Q By the way, looking at this David  
4 Yurman inspired replica cushion cut, double cut --

5 A Cable ring.

6 MR. ZARIN: That would be in Exhibit  
7 16.

8 Q Your price for that item is \$49.99.  
9 Do you see that?

10 A Correct.

11 Q Do you have any idea what David  
12 Yurman charges for, what the item that appears on  
13 the first page of that exhibit retails for?

14 A I don't know. It's gold.

15 Q So, it doesn't retail for \$49.99?

16 A Absolutely.

17 Q You indicate here that the list  
18 price for the item that you're selling for \$49.99  
19 is \$189.99.

20 Do you see that?

21 A Yes.

22 Q Where does that come from?

23 A That comes from my vendor.

24 Q From your vendor, in this case, Rich  
25 At 29th?

1 ELENA CASTANEDA

2 A Whatever the list -- whatever the  
3 multiple normally is.

4 Q Whatever what?

5 A The multiple is. I honestly don't  
6 know exactly what the multiple is; but we take the  
7 regular price and it's usually keystone, anywhere  
8 from three and a half, and then the price that we  
9 get it for, we --

10 Q I'm asking a simple question.

11 Where is it shown anywhere that the  
12 list price for this item is \$189.99?

13 Have you ever seen a listing of  
14 prices where the list price was \$189.99?

15 A That is the recommended list price  
16 that we're given.

17 Q By who?

18 A From our vendor. They have their  
19 regular wholesale price and they give us our  
20 discount price and that's where we get that number  
21 from.

22 Q Can you show me one piece of paper  
23 from Rich At 29th, P & K Jeweler, or anybody that  
24 you buy David --

25 A No.

1 ELENA CASTANEDA

2 was yes, Tiffany.

3 Now I want to know what  
4 substantiation she was talking about.

5 A Tiffany came to me with, maybe six  
6 designs, and instead of going into a whole thing,  
7 six designs had very little effect on me. It was  
8 a matter of wording change. I had no problem  
9 accommodating them, so I did.

10 Q Are you saying you didn't take down  
11 any items of Tiffany, you only changed wording  
12 with respect to Tiffany items?

13 MR. ZARIN: Objection. That's not  
14 what she said.

15 A That's not what I said. I said it  
16 was a business decision to remove those items.

17 Q So, you took down some items,  
18 correct?

19 A Yes.

20 Q How many?

21 A A handful. It was the ones that had  
22 a certain heart design or something. It's in that  
23 letter.

24 Q Did Tiffany offer, and I'm using  
25 your words now, did Tiffany offer reasonable

1 ELENA CASTANEDA

2 substantiation of their claim as to permit your  
3 staff and legal counsel to conduct an  
4 investigation?

5 A That you have to ask my legal  
6 counsel, because I don't know what that would be.

7 Q You don't know what Tiffany provided  
8 to you with respect to its claims?

9 A No. That was between my client and  
10 Tiffany. I don't get involved in that.

11 Q Other than Tiffany, have you ever  
12 taken down any item because a third party made a  
13 claim that you were selling an item that was  
14 infringing upon them, and they offered you  
15 reasonable substantiation of that claim?

16 A Nobody offered me reasonable -- no.  
17 I don't know. I can't answer that.

18 I can tell you that sometimes if  
19 it's a small request and it's reasonable and it  
20 makes sense, I will take an item down.

21 Q Did you see this copy before it was  
22 posted on your site?

23 A I did.

24 Q Did you approve it?

25 A I did.

1 ELENA CASTANEDA

2 What do you mean by that?

3 A I allowed my attorney to make a  
4 decision what is reasonable. That is not my field  
5 of expertise.

6 Q It goes on to say "Overstock Jewelry  
7 will promptly and permanently remove any  
8 item from sale that infringes the  
9 intellectual property rights of  
10 third parties."

11 Do you see that?

12 A Yes.

13 Q Did you ever do that in the history  
14 of your company?

15 A As I answered the question earlier,  
16 I removed some items from Tiffany; and removed  
17 some items from Yurman.

18 Q I just have a couple more questions  
19 about your disclaimer page, Exhibit 17.

20 Do you have that in front of you?

21 A Yes, um-hum.

22 Q I just want to be clear about  
23 something.

24 I think you testified earlier that  
25 you don't do any checking in advance to determine

1 ELENA CASTANEDA

2 whether or not a particular item that you may wish  
3 to sell violates any intellectual property rights  
4 of a designer inspired item that you wish to sell.

5 Is that correct?

6 A That's correct.

7 Q And I think you indicated, in part,  
8 that's because you sell so many items, 4,000,  
9 5,000 items, that it would be difficult or near  
10 impossible to do that, correct?

11 A I didn't see any need for it either.

12 I'm not a manufacturer of it, so I  
13 just buy what people are selling me.

14 Q So, in other words, if you didn't  
15 manufacture it, you don't think you're really  
16 exposed to a claim for infringement. Is that what  
17 you're saying?

18 MR. ZARIN: Objection.

19 Q Are you saying your manufacturer is  
20 indemnifying you, so you can rely on them?

21 I don't understand what you're  
22 saying.

23 A I've been a buyer many years, and I  
24 know, I buy things I believe are going to sell.

25 Q Without regard to whether or not

1 ELENA CASTANEDA

2 A It doesn't indicate what item they  
3 are returning. It's just an RFP off tag. Some  
4 people send it back, some people don't.

5 Q My question to you is, have you ever  
6 received a return with respect to any of the items  
7 involved in this case?

8 A Absolutely, yeah.

9 Q Have you received any such returns  
10 since February 15, 2007?

11 A Yes.

12 Q Have you received any slips from  
13 customers indicating the reason for returns since  
14 that time?

15 A I'm sure there were some in there.  
16 Sometimes they do send that slip back.

17 Q Have you discarded those?

18 A We did.

19 Q Why did you do that?

20 A Because it doesn't have any  
21 indication what item they are returning.

22 Sometimes they don't buy these items  
23 or there is no indication of the different items,  
24 you know. They usually buy three items, so I  
25 don't have that.

1 ELENA CASTANEDA

2 A It's graceful. I don't know how else  
3 to describe it.

4 Q In what way is your piece inspired by  
5 David Yurman?

6 What design elements were inspired by  
7 David Yurman?

8 A It has cable in it.

9 Q Anything else?

10 A Shape.

11 Q Anything else?

12 A It's more oval in size, but the stones.  
13 The picture is not as clear on this one; that's it.

14 Q In other words, you're not saying that  
15 your piece was inspired directly by the David Yurman  
16 piece, just various design elements, correct?

17 A I don't know what was in the designer's  
18 head when they made this piece, so I can't tell you.

19 Q You are the one who puts up on her  
20 website for all to see that the item was "inspired  
21 by" something, and you referred to an original piece.

22 So, I want to know what elements of the  
23 original piece was your piece inspired by?

24 MR. ZARIN: She answered that question.

25 A That would be the designer who has the